

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Marcel (NMI) Charles  
AKA Marcel M. Charles  
AKA Mariel M. Charles  
AKA Joseph M. Charles  
414 11<sup>th</sup> Street SE  
Immokalee, Florida

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File Number EB-02-TP-264  
NAL/Acct.No. 200232700021  
FRN No. 0007-3086-12

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: August 5, 2002**

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Marcel (NMI) Charles, a.k.a. Marcel M. Charles, a.k.a. Mariel M. Charles, a.k.a. Joseph M. Charles willfully violated Section 301 of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> by operating an unlicensed radio station. We find Marcel Charles apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On May 7, 2002, the Commission's Tampa Field Office ("Tampa Office") received a complaint from the Immokalee (Florida) Sheriff's Office of an unlicensed FM station operating on the frequency 103.3 MHz in the Immokalee, Florida area.

3. On May 15, 2002, two agents from the Tampa Office drove to the Immokalee, Florida area to investigate the complaint of unlicensed operation on the frequency 103.3 MHz. As the agents approached the Immokalee area they detected an FM radio station operating on the frequency 103.3 MHz. Using electronic direction finding techniques, the agents positively identified the source of the transmissions to be an antenna mounted on a tower attached to the back of a house at 414 11<sup>th</sup> Street SE, Immokalee, Florida. Immediately after locating the source of the signal, the agents made a field strength measurement and determined that the station exceeded the permissible level for a non-licensed low-power radio transmitter by 55,502 times. Thus, this station required a license to operate. A check of FCC license records revealed no Commission authorization issued for radio operation on this frequency in the Immokalee, Florida area. Accompanied by an officer of the Immokalee Sheriff's Office, the agents approached the property and found that the radio station was operated from a shed attached to the back of the house. The person operating the station at this time was Mr. Anivain Desprez. Mr. Desprez gave

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<sup>1</sup> 47 U.S.C. § 301.

permission to the agents to inspect the station equipment in the shed. Radio station audio equipment was observed in the shed. The agents traced the transmission cable running from the antenna into a hole in the back wall of the main residence. Mr. Desprez stated that he had only the key to the shed where the studio portion of the radio station was located. Mr. Desprez explained that a man he only knew by the name "Marcel" had given him the key to open the shed and transmit his program. He also explained that Marcel left the transmitter on and that he just spoke on the microphone. Mr. Desprez provided a telephone number which he said was used to contact "Marcel." This same telephone number was posted on the wall of the studio. The Immokalee Sheriff's officer investigated the telephone number and found it was listed to Marcel M. Charles. Mr. Desprez also stated that Marcel was the owner of the Spanish Haitian American Market located at 203 West Main Street, Immokalee, Florida 34142.

4. On May 15, 2002, the officer from the Immokalee Sheriff's Office and the agents went to the Spanish Haitian American Market. The Florida Department of State, Division of Corporations database revealed that the person who owned the market and held an occupational license for the same was Mr. Marcel M. Charles, 203 West Main Street, Immokalee, Florida. Mr. Charles was not present at the time but one of his employees telephoned a person who he said could contact Mr. Charles. One of the agents spoke on the telephone with a male subject that identified himself as Mr. Charles' brother, indicating that he would contact his brother Marcel to have the transmitter turned off. Also, the Market employee gave the agents their business card which had printed on it the same telephone number that was posted at the radio station and that, according to Mr. Desprez, was the telephone number he used to contact Marcel in matters concerning the operation of the radio station. The radio station ceased transmitting a few minutes after the agents' visit to the market.

### **III. DISCUSSION**

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license.

6. Based on the evidence before us, we find that on May 15, 2002, Marcel (NMI) Charles, a.k.a. Marcel M. Charles, a.k.a. Mariel M. Charles, a.k.a. Joseph M. Charles willfully<sup>2</sup> violated Section 301 of the Act by operating radio transmission apparatus without a license.

7. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amount for the violation cited in this notice is \$10,000.<sup>3</sup> Section 503(b)(2)(D) of the Act requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> 47 C.F.R. § 1.80(b)(4).

require.”<sup>4</sup> Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>6</sup> Marcel (NMI) Charles, a.k.a. Marcel M. Charles, a.k.a. Mariel M. Charles, a.k.a. Joseph M. Charles is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *NAL*, Marcel Charles SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

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<sup>4</sup> 47 U.S.C. § 503 (b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>7</sup> See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and Certified Mail Return Receipt Requested to Marcel Charles at 414 11<sup>th</sup> Street SE, Immokalee, FL 34142 and at 203 W. Main Street, Immokalee, FL 34142.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow  
District Director, Tampa Office  
Enforcement Bureau